

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
2 A Limited Liability Partnership  
3 Including Professional Corporations  
4 SHANNON Z. PETERSEN, Cal Bar No. 211426  
5 SIEUN J. LEE, Cal Bar No. 311358  
6 12275 El Camino Real, Suite 100  
7 San Diego, California 92130-4092  
8 Telephone: 858.720.8900  
9 Facsimile: 858.509.3691  
10 Email: spetersen@sheppardmullin.com  
11 slee@sheppardmullin.com

12 Attorneys for Defendant  
13 SMARTBIZ BANK, N.A.

14 UNITED STATES DISTRICT COURT  
15  
16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
17  
18

19 MECHAUN SCOTT, individually,

20 Plaintiff,

21 v.

22 THOMSON REUTERS  
23 CORPORATION; SMARTBIZ BANK,  
24 N.A., and DOES 1-10 inclusive,

25 Defendant(s).

Case No. 4:25-cv-04103-RS

**DECLARATION OF LOUIS  
DAROSA IN SUPPORT OF  
DEFENDANT SMARTBIZ BANK,  
N.A.'S MOTION TO COMPEL  
ARBITRATION**

Date: August 14, 2025

Time: 1:30 p.m.

Ctrm: 3

Judge: Chief District Judge  
Richard Seeborg

1 I, Louis daRosa, declare as follows:

2 1. I am the Chief Technology Officer (“CTO”) for Defendant SmartBiz Bank, N.A.<sup>1</sup>  
3 (“SmartBiz”). I have held this position with SmartBiz since January of 2024, and have been  
4 employed by SmartBiz since August of 2021. In my capacity as the CTO, I am responsible for  
5 overseeing the company’s technological operations, including the development and maintenance  
6 of SmartBiz’s online platform through which users submit business loan applications.

7 2. I have access to information stored on SmartBiz’s internal computer systems and  
8 business records, including the loan application records of Plaintiff Meachaun Scott. The files,  
9 records, and related documents referenced in this declaration were made either by persons with  
10 knowledge of the matters recorded or from information supplied by persons with such knowledge,  
11 and were made at or about the time of the event recorded. It is SmartBiz’s practice to maintain  
12 such records, materials, and related documents in the regular course of its business. The  
13 documents and records referenced in this declaration are business records that are prepared,  
14 produced, and maintained in the above-described manner. I have reviewed the records and  
15 materials referenced in this declaration, and except as otherwise specifically stated in this  
16 declaration, the facts set forth in this declaration are based on my personal knowledge and/or my  
17 personal knowledge obtained from my review of SmartBiz’s documents and records.

18 3. SmartBiz provides financial services designed for small businesses, including SBA  
19 loans and other types of loans. SmartBiz offers a fully digital application process, so applicants  
20 can apply for loans for their small businesses through SmartBiz’s website.

21 4. SmartBiz’s business records show that on April 26, 2023, SmartBiz sent an email  
22 entitled “How to Maximize SBA Loan Proceeds” to Ms. Scott at meascott12@gmail.com. At the  
23 bottom of the email, there was a button stating, “Start My Application,” which was hyperlinked to  
24 SmartBiz’s website. Attached as **Exhibit A** is a true and correct copy of the email that SmartBiz  
25 sent to Ms. Scott.

26  
27 <sup>1</sup> SmartBiz Bank, N.A. was formed in March of 2025, following SmartBiz Loans’ merger with  
28 another company. As used herein, “SmartBiz” refers collectively to SmartBiz Bank, N.A. and its  
predecessor entity, SmartBiz Loans.

1           5.       SmartBiz’s business records further show that on the same day, Ms. Scott opened  
2 the email and clicked the “Start My Application” button, which directed her to “Apply for an SBA  
3 or term loan online” page on SmartBiz’s website. Attached as **Exhibit B** is a true and correct  
4 copy of the current version of that webpage. While Exhibit B is not an exact copy of the webpage  
5 as it appeared to Ms. Scott on April 26, 2023, it is substantively similar and contains the same  
6 disclosures that Ms. Scott would have seen.

7           6.       On SmartBiz’s website, Ms. Scott selected Line of Credit for the financing type,  
8 entered a loan amount of \$100,000, and provided her name, email, phone number, and legal  
9 business name. During this process, the website displayed the following disclosure:

10       ☐ I have reviewed, understand, and agree to the SmartBiz Terms of Service and Privacy  
11 Policy. California residents please click here to review your rights under the California  
Consumer Privacy Act (CCPA).

12       ☐ I consent to the use of automated dialing technology, prerecorded/artificial voice, or text  
13 messaging to contact me at the phone number provided about offers from SmartBiz and  
14 SmartBiz’s lending partners, even if registered on state or federal do-not-call list. I  
understand consent is not required for this application.

15           7.       The terms “SmartBiz Terms of Service,” “Privacy Policy,” and “click here”  
16 appeared in blue, distinguishing them from the surrounding black text, and were each hyperlinked  
17 to the corresponding documents—SmartBiz’s Terms of Service, Privacy Policy, and a section of  
18 the Privacy Policy describing a consumer’s rights under the California Consumer Privacy Act in  
19 effect at that time. Ms. Scott could have accessed and reviewed the Terms of Service by clicking  
20 the hyperlink. Moreover, at the bottom of the same page and also every page of the website  
21 contained a hyperlink to the Terms of Service, which Ms. Scott could have also clicked and  
22 reviewed.

23           8.       The two boxes appearing next to the disclosures were not pre-checked. Ms. Scott  
24 affirmatively checked the box, confirming that “[she] ha[s] reviewed, understand[s], and agree[s]  
25 to the SmartBiz Terms of Service.” Once she did so, the “Continue to pre-qualify” button became  
26 active and clickable. She then clicked the “Continue to pre-qualify” button located below the  
27 disclosures, and subsequently, submitted her loan application online.

28

10. SmartBiz's records confirm that Ms. Scott agreed to arbitrate her disputes by agreeing to the Terms of Service, which includes an arbitration provision. SmartBiz has no record of receiving any written notice to opt out of the arbitration agreement from Ms. Scott.

Executed on this 3rd day of July, 2025, at Pleasanton, California.

Louis daRosa

EXHIBIT A

[View in browser](#)



Wondering how you can use SBA loan proceeds? SBA loans cover most purchases your business might need to make to help fuel growth.

Learn more about SBA loan spending guidelines and how you may be able to use these loans to get short-term and long-term working capital.

[Read More](#)



### Have You Heard?

We're celebrating National Small Business Week early by offering qualified SBA 7(a) loan applicants a \$350 gift card.

[Learn More](#)

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## Anchor Light Therapy Business Story

Travis DeMott and Laura Richer co-own Anchor Light Therapy Collective®, providing counseling and therapy services to the Seattle community.

To help scale their business, the pair worked with SmartBiz to apply for a \$100,000 SBA loan from a bank in our network, allowing them to hire more therapists, move into a new location, and expand marketing efforts.

[Read More](#)

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### FUND YOUR BUSINESS GOALS

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Pre-qualify for \$30,000 – \$350,000

**NO IMPACT ON YOUR CREDIT SCORE\***



## Start My Application

STAY CONNECTED



WHAT YOU NEED TO KNOW: Communications from SmartBiz Loans<sup>®</sup> are intended to provide general information on relevant topics for managing small businesses. Be aware that this is not a comprehensive analysis of the subject matter covered and is not intended to provide specific recommendations to you or your business with respect to the matters addressed. Please consult legal and financial professionals for further information.

\*We conduct a soft credit pull that will not affect your credit score. However, in processing your loan application, the lenders with whom we work will request your full credit report from one or more consumer reporting agencies, which is considered a hard credit pull and happens after your application is in the funding process and matched with a lender who is likely to fund your loan.

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SmartBiz, 433 California St, San Francisco, CA 94104

[Unsubscribe](#)

# EXHIBIT B



(866) 283-8726

Log In

# Access to the right financial solutions for right now. One fast and simple application.

SmartBiz Bank is dedicated to offering financial services designed specifically for small businesses through its products and lending network. See if you pre-qualify for up to \$350,000 in 5 minutes. No impact to your credit score.<sup>1</sup>

## Step 1: Which type of financing do you prefer?

Our streamlined process and expert guidance help you secure funding efficiently, so you can focus on running your business. Choose the financing you prefer, or let us recommend the best fit for your business.



**We support you at every step**

Our dedicated teams are here to help you through the loan application process.

**SBA Loan****loans up to \$350,000**

- ☐ The gold standard in business lending. Variable interest rates, longest terms, and lowest monthly payments.

**Term Loan****loans up to \$300,000**

- ☐ Fixed interest rates and shorter repayment terms. Faster funding and less documentation.

**Line of Credit****revolving credit up to  
\$100,000**

- ☐ Flexible funds on hand to manage your cash flow seamlessly.

**Help me decide**

- ☐ Not sure which type of financing fits best for your small business? We help you choose and apply for the right business loan.

**We're your SBA lending partner**

Whether you're expanding, refinancing debt, or boosting cash flow, we're making the process simple.

**We keep your information safe**

Our bank-level, 256-bit encryption protects your privacy and keeps your data secure.

**Customers trust SmartBiz!**

**Excellent**  
4.6 out of 5  
★ Trustpilot

**Such an easy loan process**

"Our experience with SmartBiz was seamless. Their loan officer

## Step 2: How much do you want to borrow?

Use the slider to select your loan amount or enter an amount in the text field.

\$ 175,000 



\$50,000

\$350,000

MONTHLY  
PAYMENT

\$2,336

LOAN TERM


10 Years

INTEREST RATE\*

10.25%

APR WITH FEES

11.05%

\* SBA loans offered by banks in the SmartBiz lending network have a variable rate of Prime Rate plus 2.75% to 6.5% 

was very thorough and made sure that we had all of the required documentation for our SBA loan. The turn around time from application to funding was very quick. We are very pleased with the experience we had with SmartBiz.”

— Jennifer

### Excellent service, would highly recommend

“The online process was seamless and the assistance I received from the staff was excellent. Skylar was responsible for guiding me through the process and she did a fantastic job. Thanks for getting my loan approved and closed so quickly.”

— Frank H.

### Best decision I ever made!

“I have been turned down at several banks during the previous months. I decided to give SmartBiz a shot after doing research to make sure they are legitimate. The loan officer was thorough and professional and we got the deal done. I saved

## Step 3: Tell us a bit about you

First Name

Last Name

Email

Phone Number

Legal Business Name <sup>?</sup>

**Have a promo code?**

How did you hear about us?

Select an option ▼

more than \$25,000/month in payments which put my business on a path to new growth and success!!"

— Jeffrey

- ☐ I have reviewed, understand, and agree to the [SmartBiz Terms of Service](#) and [Privacy Policy](#). California residents please [click here](#) to review your rights under the California Consumer Privacy Act (CCPA).
- ☐ I consent to the use of automated dialing technology, prerecorded/artificial voice, or text messaging to contact me at the phone number provided about offers from SmartBiz and SmartBiz's lending partners, even if registered on state or federal do-not-call list. I understand consent is not required for this application.

## Continue to pre-qualify

 Only takes 5 minutes and doesn't impact your credit score.<sup>1</sup>

1. We conduct a soft credit pull that will not affect your credit score. However, in processing your loan application, the lenders with whom we work with will request your full credit report from one or more consumer reporting agencies, which is considered a hard pull.

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(866) 283-8726

[support@smartbizbank.com](mailto:support@smartbizbank.com)

[Privacy Policy](#)

[Terms of Use](#)

[Member FDIC](#)

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**Excellent**  
4.6 out of 5  
 Trustpilot



EXHIBIT C

**SmartBizLoans.com****Terms and Conditions of Service**

(January 2023)

PLEASE CAREFULLY REVIEW THESE TERMS AND CONDITIONS OF SERVICE. BY CLICKING YOUR CONSENT AND/OR ACCESSING THIS WEBSITE YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, PLEASE DO NOT ACCESS THIS WEBSITE OR APPLY FOR ANY LOAN PRODUCT OR SERVICE THROUGH US.

**User Agreement**

The following are terms of a legal agreement (the "Agreement") between you and BillFloat, Inc. dba SmartBiz Loans, and its affiliates ("SmartBiz", "we", "us", "our", or the "SmartBiz Team"), that sets forth the terms and conditions for your use of our services, including your use of this web site and our hosted web-based applications (the "Site"). "You" includes any corporate or partnership entity as well as the individual owners of such entities, as the context indicates. This Site and the services it offers (the "SmartBiz Services") are being provided to you expressly subject to this Agreement. By clicking your consent and/or accessing, browsing and/or using this Site, you acknowledge that you have read, understood, and agree to be bound by the terms of this Agreement and to comply with all applicable laws and regulations. The terms and conditions of this Agreement form an essential basis of our bargain.

We reserve the right to amend this Agreement at any time and will notify you of any such changes by posting the revised Agreement on the Site. You should check this Agreement periodically for changes. All changes shall be effective upon posting. Your continued use of the Site after any change to this Agreement constitutes your agreement to be bound by any such changes. We may terminate, suspend, change, or restrict access to all or any part of this Site without notice or liability.

**Registration Information and the Need for Accuracy**

You are invited to register at the Site to help us tailor the SmartBiz Services for your business financial needs and to alert you to other products and services for your business. In registering to use the Site, you agree to provide accurate, true, current, and complete information about your business as requested by the registration screens, including information about principal shareholders, officers, and directors of the business. As a convenience to you, the Site will create a profile for your business based on the registration information that you provide (a "SmartBiz Account"). This profile and any registration information you provide will be handled as described in our Privacy Policy (<https://www.smartbizloans.com/agreements/privacy-policy.pdf>).

IT IS YOUR RESPONSIBILITY TO ENSURE THAT ANY INFORMATION YOU PROVIDE TO US ABOUT YOUR BUSINESS IS ACCURATE AND IS NOT CONTRADICTED BY YOUR BUSINESS RECORDS AND PUBLIC FILINGS, SUCH AS, BUT NOT LIMITED TO, YOUR TAX RETURNS AND CORPORATE FILINGS.

SmartBiz and lenders with whom we work will check all or part of your loan application against documents such as tax returns you have provided to the IRS in the past. We may also review your website and other publicly-available information about you. We cannot effectively help you find an appropriate lender or help prepare your loan application unless the information you have provided us is accurate. You understand, acknowledge, and agree that SmartBiz and Other Loan Participants can obtain, use and share tax return information on a recurring basis for purposes of (i) providing the Services; (ii) originating, maintaining, managing, monitoring, servicing, selling, insuring, and securitizing a loan; (iii) marketing; or (iv) as otherwise permitted by applicable laws, including state and federal privacy and data security laws. SmartBiz includes the Company's affiliates, agents, service providers and any of aforementioned parties' successors and assigns. The Other Loan Participants includes any actual or potential owners of a loan resulting from your loan application,

or acquirers of any beneficial or other interest in the loan, any insurer, guarantor, any servicers or service providers for these parties and any of aforementioned parties' successors and assigns.

You certify that information provided in your loan application and in all supporting documents and forms is true and accurate. The penalty for knowingly making a false statement to obtain a loan guaranteed by the Small Business Administration (SBA) can include fines of up to \$25,000 and imprisonment of up to five years, pursuant to 18 U.S.C. § 1001. False statements to a federally insured depository institution, such as the SBA lenders with whom we work, may be punished with fines up to \$1,000,000 and/or imprisonment for up to 30 years pursuant to 18 U.S.C. § 1014.

By registering on the Site, you have provided written instructions in accordance with the Fair Credit Reporting Act, as amended (FCRA), for SmartBiz, and the lenders with whom we work, to obtain your credit report and/or credit score(s) on a recurring basis to provide them to you while you are doing business with SmartBiz, and such information may be obtained from Trans Union, and/or Equifax (Credit Bureaus) or any other credit reporting company. You understand and agree that, pursuant to such authorization, SmartBiz may access your credit profile, including without limitation, your credit report, credit score(s) and other related information, to, among other things, verify your identity and to provide additional products, services, features, and/or functionality to you, and that they shall be offered pursuant to the same authorization you provided SmartBiz for SmartBiz to obtain your credit report and/or credit score(s) on a recurring basis to provide them to you review while you are doing business with SmartBiz.

You further understand and agree that, by registering on the Site, you have provided written instructions in accordance with FCRA for SmartBiz to obtain and use the information you have provided, and your credit report(s) and/or scores(s) to notify you of credit opportunities and other products and services that may be available to you through SmartBiz or through unaffiliated third parties.

#### **Closing Your Account and Ceasing Email Communications**

If you wish to cancel and close your SmartBiz Account, contact us by telephone at 866-283- 8726. If you wish to stop receiving email communications from us, you are advised to close your SmartBiz Account.

#### **Who We Are and What We Do**

SmartBiz helps businesses find lenders and apply for small business loans. SmartBiz is not a small business lender and does not, itself, provide SBA-guaranteed or other business loans. SmartBiz has expertise identifying appropriate lenders for various types and sizes of businesses that often have a difficult time securing affordable credit. SmartBiz also helps lenders streamline and expedite the process of applying for small business credit, and has expertise and proprietary technology to do so. To the extent you choose, we may notify you of commercial credit opportunities and other products and services that may be available to your business entity through lenders with whom we work or through third parties (such as, among other things, advertisements or offers for available loan options, business products or services, or credit related products or services).

#### **SmartBiz Advisor®**

The SmartBiz Services include SmartBiz Advisor, a platform that helps you learn about how banks typically evaluate your business and recommends steps for you to consider that might increase the likelihood of approval when applying for a business loan. Any analysis or estimates we provide as part of SmartBiz Advisor, including your Loan Ready Score™, are for educational purposes only. Our analysis or estimates are based on certain assumptions and use only data that we have. In this respect, we may elect to consider, ignore, emphasize or de-emphasize certain factors in our sole discretion. We do not guarantee that the information we present as part of SmartBiz Advisor, including your Loan Ready Score, is the same information that may be used or reviewed by a third party to assess your eligibility for any particular product or service. SmartBiz Advisor is not a financial or legal advisor as defined under federal or state law.



Use of SmartBiz Advisor is not a replacement for personal, professional advice or assistance regarding your finances, credit history or fixing your credit rating.

### **Service Fees**

For non-SBA loans applications, in exchange for providing the SmartBiz Services, we charge a fee of up to three percent 6% of the amount of the small business loan which you accept from a lender we helped you find. SmartBiz does not charge you any fees for SBA loan applications. However, the lender may charge you a fee (“Lender Fee”). For SBA loans, because you may be required to pay the Lender Fee even if your loan is not ultimately funded, we will engage in extensive prequalification of your business and use commercially reasonable efforts to only prepare a loan application for you if we believe, based on the information you have provided to us, that your business is eligible to receive the loan for which we help you apply. It remains your responsibility to ensure that the information you provide to us about your business is not contradicted by documents and information, such as, but not limited to, tax returns, that lenders with whom we work may request as part of your application.

### **Updating Your Information**

In order to assist your business in finding a lender and applying for a loan, we require up-to- date information about your business and its principal shareholders, directors, and officers. For this reason, we require that you complete our forms within 30 days of the time that you begin filling them out. If you do not complete our application forms within this 30 day timeframe, you may be required to fill them out again in order to proceed with having us help you find a lender and prepare your loan application.

### **SBA Requirements for Loan Applications**

If you apply for an SBA loan of more than \$25,000, a lien on business assets is required including assets such as accounts receivable or inventory, as well as fixed assets such as new equipment purchased with loan proceeds or commercial real estate owned by the business. The lender may require additional collateral, as well. Such liens may also be required for non-SBA business loans. The charges, rules, regulations and procedures related to your SBA loan application are governed by federal regulations. Such federal regulations are subject to change, and therefore, the information contained herein is subject to change. Additional requirements or changes may be imposed by a lender or the SBA. You are responsible for understanding all requirements, costs and restrictions applicable to the 7(a) Loan program. You are encouraged to seek the advice of your own legal counsel before and during the entirety of the 7(a) Loan application process.

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### **Privacy and Your Information**

The SmartBiz Privacy Policy (<https://www.smartbizloans.com/agreements/privacy-policy.pdf>) is incorporated into this Agreement. This policy explains how SmartBiz protects the privacy of nonpublic business and personal information you share with us and how we use it. The policy may change from time to time at our discretion. Changes will be effective upon posting to the Site.

You acknowledge that we may disclose and transfer any information that you provide through this Site to (i) SmartBiz's affiliates, lenders, agents or information providers; (ii) to providers of small business credit and services that may be appropriate for your company; (iii) to any other person or entity with your consent; or (iv) if we have a right or duty to disclose or are permitted or compelled to so disclose such information by law. You consent to the transmission, transfer or processing of such information to, or through, any country in the world, as we deem necessary or appropriate, and by using and providing information through this Site you agree to such transfers.

Use of this Site may be monitored, tracked, and recorded. Anyone using this Site expressly consents to such monitoring, tracking, and recording. You are responsible for being familiar with the current version of these Terms and Conditions posted on the Site during each session.

### **Trademarks**

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site. You are encouraged to review the Privacy Policy and Terms of Use on these third party websites if you choose to access them.

#### **Use of Third Party Service Providers**

We may use third party service providers to assist in providing certain SmartBiz Services with or without notice to you (each, a "Third Party Service Provider"). We may also change Third Party Service Providers or may provide a SmartBiz Service without the assistance of such third party. You consent and authorize us to delegate the authorizations you provide to us to our Third Party Service Provider(s) as we deem necessary or desirable to provide the applicable SmartBiz Service to you. You agree that the terms and conditions of this Agreement, including any of the other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement, inure to the benefit of such Third Party Service Providers and such Third Party Service Providers are deemed to be third party beneficiaries of this Agreement, including any other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement. You also agree that all references to us within this Agreement and any incorporated terms are also deemed to include, where applicable, our agents, such as the Third Party Service Providers.

To protect the privacy and security of your personal information, we require that Third Party Service Providers who are authorized to access your personal information take privacy and confidentiality measures to protect it.

#### **Use of Cookies**

We use temporary cookies for login session management. If you disable cookies, you cannot access the Site.

#### **Use of Browser Plug-Ins**

Use of our Site requires users to run Javascript in their browser.

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IN NO EVENT WILL SMARTBIZ BE LIABLE FOR ANY DAMAGES INCLUDING GENERAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES, LOSSES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION) OF ANY KIND WHETHER IN AN ACTION IN CONTRACT OR NEGLIGENCE ARISING OR RELATING IN ANY WAY TO THE USE OR INABILITY TO USE BY ANY PARTY OF THE CONTENT, THE SITE OR ANY THIRD-PARTY SITE TO WHICH THIS SITE IS LINKED, OR IN CONNECTION WITH ANY FAILURE OF PERFORMANCE, ERROR, OMISSION,

INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS OR LINE OR SYSTEM FAILURE, EVEN IF SMARTBIZ, OUR REPRESENTATIVES THEREOF, ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THIS SITE IS TO STOP USING THE SITE. IF YOUR USE OF MATERIALS FROM THIS SITE RESULTS IN THE NEED FOR SERVICING, REPAIR OR CORRECTION OF EQUIPMENT OR DATA, YOU ASSUME ANY COSTS THEREOF. IF THE FOREGOING LIMITATION IS FOUND TO BE INVALID, YOU AGREE THAT SMARTBIZ'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION OF ANY KIND OR NATURE SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

#### **Security of Data Transmissions and Storage**

Electronic (including wired and wireless) communications through the Site may not be encrypted. You acknowledge that there is a risk that data, including e-mail, electronic and wireless communications and personal data, may be accessed by unauthorized third parties when communicated between you and SmartBiz or between you and other parties.

#### **Indemnification**

You agree to defend, indemnify and hold harmless SmartBiz from and against any and all claims, losses, expenses, demands or liabilities, including attorneys' fees and costs, incurred by SmartBiz in connection with any claim by a third party (including any intellectual property claim) arising out of (i) materials and content you submit to, post to, or transmit through the Site, or (ii) your use of the Site in violation of this Agreement or in violation of any applicable law. You further agree that you will cooperate fully in the defense of any such claims. SmartBiz reserves the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you shall not in any event settle any such claim or matter without the written consent of SmartBiz.

#### **Monitoring of the Site**

SmartBiz has no obligation to monitor the Site; however, you acknowledge and agree that SmartBiz has the right to monitor the Site electronically from time to time and to disclose any information as necessary or appropriate to satisfy any law, regulation or other governmental request, to operate the Site, or to protect itself or other users of the Site.

#### **Potential Disruption of Service**

You shall be responsible for obtaining and maintaining all telephone, computer hardware, software, and other equipment needed to access and use this Website. Access to this Site may from time to time be unavailable, delayed, limited or slowed due to, among other things:

- hardware failure, including among other things, failures of computers (including your own computer), servers, networks, telecommunication lines and connections, and other electronic and mechanical equipment;
- software failure, including among other things, bugs, errors, viruses, configuration problems, incompatibility of systems, utilities or applications, the operation of firewalls or screening programs, unreadable codes, or irregularities within particular documents or other content;
- overload of system capacities;
- damage caused by severe weather, earthquakes, wars, insurrection, riots, terrorism, civil commotion, act of God, accident, fire, water damage, explosion, mechanical breakdown or natural disasters;
- interruption (whether partial or total) of power supplies or other utility of service;
- strike or other stoppage (whether partial or total) of labor;
- governmental or regulatory restrictions, exchange rulings, court or tribunal orders or other human intervention; or



- any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond our control.

If access to this Site is unavailable, delayed, or limited, or if this Site does not operate quickly and efficiently, you may be unable to complete your application or transmit your instructions for transactions and other matters, or such application or instructions may not be promptly executed or you may be unable to retrieve information on a timely basis. If your operations are dependent on such communications with us, and such communications are disrupted or delayed, you may suffer losses. SmartBiz will not be liable for any such loss.

#### **Use of Personally Identifiable Information**

SmartBiz's practices and policies with respect to the collection and use of personally identifiable information are governed by the SmartBizloans.com Privacy Policy

(<https://www.smartbizloans.com/agreements/privacy-policy.pdf>).

#### **Unauthorized Use of Your Registration**

If you believe that someone has used your registration information to access the Site without your authorization, please call us immediately at 866-283-8726 or email us at [privacy@smartbizloans.com](mailto:privacy@smartbizloans.com).

#### **Business Use of this Site**

You agree to use the Site for only business use, not for seeking household, personal, or family credit.

#### **Consultation with Counsel**

If you do not understand any aspect of this Agreement or its terms and conditions, you are advised to consult with your own legal counsel for advice. IT IS IMPORTANT THAT YOU UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT BECAUSE THEY WILL BE BINDING UPON YOU.

#### **Availability**

This Site is not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to local law or regulation. By offering this Site and Content no distribution or solicitation is made by SmartBiz to any person to use the Site or Content in jurisdictions where the provision of the Site and/or Content is prohibited by law.

#### **Termination**

The information set forth in Terms and Conditions of Service is effective until terminated by SmartBiz. SmartBiz may terminate this Agreement at any time without notice, or suspend or terminate your access and use of the Site at any time, with or without cause, in SmartBiz's absolute discretion and without notice. The following provisions of the Agreement shall survive termination of your use or access to the Site: the sections concerning Indemnification, Disclaimer of Warranties, Limitation of Liability, Waiver, Applicable Law and Dispute Resolution, and General Provisions, and any other provision that by its terms survives termination of your use or access to the Site.

#### **Waiver**

Failure by SmartBiz to enforce any of its rights under this Agreement shall not be construed as a waiver of those rights or any other rights in any way whatsoever.

#### **Applicable Law**

This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the United States and, to the extent applicable, the laws of the State of California, without regard to its conflict of laws rules.

**Dispute Resolution and Arbitration**

YOU AGREE THAT YOU HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND SMARTBIZ. YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO REJECT THIS PROVISION AS PROVIDED IN PARAGRAPH (b) BELOW.

a. Either party to this Agreement, may, at its sole election, require that the sole and exclusive forum and remedy for resolution of a Claim be final and binding arbitration pursuant to this section (the "Arbitration Provision"), unless you opt out as provided in section (b) below. As used in this Arbitration Provision, "Claim" shall include any dispute, or controversy involving you (or persons/entities claiming through or connected with you), on the one hand, and us (or persons/entities claiming through or connected with us), on the other hand, relating to or arising out of this Agreement, the Site, and/or the activities or relationships that involve, lead to, or result from any of the foregoing, including the validity and enforceability of this Arbitration Provision, any part thereof, or the entire Agreement. Claims are subject to arbitration regardless of whether they arise from contract; tort (intentional or otherwise); a constitution, statute, common law, or principles of equity; or otherwise. Claims include matters arising as initial claims, counter-claims, cross-claims, third-party claims, or otherwise. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable.

b. You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice to SmartBiz Loans, 433 California St., Suite 900, San Francisco CA, 94106, Attention: Legal Department, which if received at the specified address within 30 days of the date of your first acceptance of this Agreement. The opt out notice must clearly state that you are rejecting arbitration; identify the Agreement to which it applies by date; provide your name, address, and social security number; and be signed by you. No other methods can be used to opt out of this Arbitration Provision.

c. If a Claim arises, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide you with a neutral and cost effective means of resolving the dispute quickly. You agree that before filing any Claim in arbitration, you will first submit any Claims by sending an email to [legal@smartbizloans.com](mailto:legal@smartbizloans.com) at any time.

d. Arbitration shall be commenced and conducted through JAMS ([www.jamsadr.org](http://www.jamsadr.org)) under its applicable rules, as modified by this agreement to arbitrate. All remedies available to the parties under applicable federal, state, or local laws shall remain available in arbitration. Unless you and SmartBiz agree otherwise in writing, the final arbitration hearing shall take place at the JAMS facility located in or nearest to your city of residence, or remotely if such location is inconvenient for you. If you initiate arbitration against SmartBiz, you may be required to pay an initial fee (unless you qualify for waiver), and all other arbitration costs (including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services) shall be paid as determined by the arbitrator. If SmartBiz initiates arbitration against you, SmartBiz shall pay all costs associated with the arbitration. Regardless of the outcome of the arbitration, you and SmartBiz will each pay his/her/its own attorneys' fees and costs unless an award of attorneys' fees is available under applicable statute. The arbitrator's award will consist of a written statement stating the disposition of each Claim. Either party may litigate in a Court of Competent Jurisdiction to compel arbitration, to stay proceedings pending arbitration, or to modify, confirm, vacate, or enter judgment on the award entered by the arbitrator. If any arbitration fees are determined to be "cost prohibitive," SmartBiz will pay such arbitration fees. At the election of any party, this Arbitration Provision shall not apply to claims subject to the jurisdiction of any small claims court of competent jurisdiction.

e. NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS, EVEN IF THE CLAIM OR CLAIMS THAT ARE THE SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN ASSERTED (OR

COULD HAVE BEEN ASSERTED) IN A COURT AS CLASS REPRESENTATIVE, OR COLLECTIVE ACTIONS IN A COURT. No party to the arbitration may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same arbitration unless those persons are parties to a single transaction. Unless consented to in writing by all parties to the arbitration, an award in arbitration shall determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration, and shall not (a) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a named party; nor (b) make an award for the benefit of, or against, anyone other than a named party. No administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this section (f), and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. Any challenge to the validity of this section (f) shall be determined exclusively by a court and not by the administrator or any arbitrator. You acknowledge that without this provision, you would have the right to participate in class actions in court with a jury trial.

f. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by and enforceable under the Federal Arbitration Act (“FAA”) and federal arbitration laws. The arbitrator will apply substantive law consistent with the FAA and this Arbitration Provision. The arbitrator shall take steps to reasonably protect confidential information.

g. This Arbitration Provision shall survive (i) suspension, termination, revocation, closure, or amendments to this Agreement and the relationship of the parties; and (ii) any bankruptcy or insolvency. If any portion of this Arbitration Provision is deemed invalid or unenforceable, the remaining portions of this Arbitration Provision shall nevertheless remain valid and in force. Any portion of this Arbitration Provision shall be severed or modified if necessary to render it enforceable.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF ANY PARTY ELECTS ARBITRATION PURSUANT TO THIS ARBITRATION PROVISION. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY ANY PARTY.

#### **Other Agreements**

This Agreement shall be subject to any other agreements you have entered into with SmartBiz.

#### **Additional Terms**

Certain sections or pages on the Site may contain separate terms and conditions of use, which are in addition to the terms and conditions of this Agreement. In the event of a conflict, the additional terms and conditions will govern for those sections or pages.

#### **Severability**

If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall be enforced to the fullest extent possible, and the remaining provisions of the Agreement shall remain in full force and effect.

#### **General Provisions**

This Agreement supersedes any previous Terms of Use Agreement to which you and SmartBiz may have been bound with regard to SmartBiz and SmartBiz.com. This Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. Neither the course of conduct between parties nor trade practice shall act to modify any provision of the Agreement. All rights not

expressly granted herein are hereby reserved. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

#### **U.S. PATRIOT ACT DISCLOSURE**

#### **IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: If you receive a loan from one of our partner lenders, this is considered an account. When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

#### **CALIFORNIA BUSINESSES**

If your business is located in California, the services provided to you under this Agreement may be provided by our affiliate, Funding Solutions LLC ("Funding Solutions"), pursuant to a California Finance Lender's license from the Department of Financial Protection and Innovation.

In such event, all of the Terms and Conditions set forth in this Agreement by SmartBiz will apply to your relationship with Funding Solutions. SmartBiz and Funding Solutions have agreed that Funding Solutions may use the same procedures, programs, and processes for the services provided by SmartBiz under this Agreement.